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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

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ELIZABETH KEWANDAWAHA,)
Plaintiff,) No. CV-05-323-CI
v.) ORDER DENYING PLAINTIFF'S
MICHAEL J. ASTRUE,) MOTION FOR SUMMARY JUDGMENT
Commissioner of Social) AND GRANTING DEFENDANT'S
Security,) MOTION FOR SUMMARY JUDGMENT
Defendant.)

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BEFORE THE COURT are cross-Motions for Summary Judgment (Ct. Rec. 16, 18.) Attorney Lora Lee Stover represents plaintiff Elizabeth Kewandawaha (Plaintiff); Special Assistant United States Attorney David Burdett represents Defendant. The parties have consented to proceed before a magistrate judge. (Ct. Rec. 6.) After reviewing the administrative record and briefs filed by the parties, the court **DENIES** Plaintiff's Motion for Summary Judgment, and directs entry of judgment for Defendant.

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JURISDICTION

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On October 8, 2002, Plaintiff protectively filed applications for disability insurance benefits and Social Security Income (SSI) benefits. (Tr. 58.) She alleged disability due to depression, post-traumatic stress disorder, multiple personality disorder, anger management, dissociative disorder, not otherwise specified, and dysthymic disorder, with an onset date of May 1996. (Tr. 98.)

ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND
GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT - 1

1 Benefits were denied initially and on reconsideration. (Tr. 34,
2 40.) Plaintiff requested a hearing before an administrative law
3 judge (ALJ), which was held before ALJ John Hood on February 15,
4 2005. (Tr. 368-99.) Plaintiff, who was present and represented by
5 counsel, testified. Medical expert Anthony Delbert, Ph.D.,
6 testified and vocational expert Fred Cutler testified. On February
7 22, 2005, the ALJ denied benefits, and the Appeals Council denied
8 review. (Tr. 25-27.) The instant matter is before this court
9 pursuant to 42 U.S.C. § 405(g).

10 **STATEMENT OF THE CASE**

11 The facts of the case are set forth in detail in the transcript
12 of proceedings, and are briefly summarized here. At the time of the
13 hearing, Plaintiff was 27 years old with a one year old son. (Tr.
14 382.) She had a high school education and past work experience as
15 a telemarketer and in-home care giver for her invalid mother. She
16 reported she had quit the telemarketer job after three months
17 because her co-workers engaged in rude behavior. (Tr. 384.) She
18 testified she had physical problems with her right knee, but had not
19 followed up with surgery as suggested in 1997. She stated the
20 problem was not so bad anymore. She also testified she had problems
21 with asthma, but had not used an inhaler for the past year. (Tr.
22 385-86.) She described her emotional problems as depression and
23 difficulty concentrating if there were more than five people in the
24 room. (Tr. 387.) She no longer took anti-depressants because her
25 doctor felt she no longer needed them, and counseling was stopped in
26 August 2004, when her counselor reported there was nothing left to
27 discuss. (Id.)

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ADMINISTRATIVE DECISION

At step one, ALJ Hood found Plaintiff had not engaged in substantial gainful activity during the relevant time. (Tr. 24.) At step two, he found Plaintiff had severe impairments of mathematics disorder, anxiety disorder, nos otherwise specified (nos), and personality disorder, nos, with cluster B features. (Tr. 21.) He also found she was morbidly obese. (Id.) At step three, ALJ Hood determined Plaintiff's impairments, alone and in combination, did not meet or medically equal one of the listed impairments in 20 C.F.R., Appendix 1, Subpart P, Regulations No. 4 (Listings). (Tr. 21-22.) The ALJ found Plaintiff was less than fully credible. (Tr. 222.) At step four, he determined Plaintiff had a residual functional capacity (RFC) for a wide range of medium work, with moderate limitations in her "ability to sustain an ordinary routine without special supervision; the ability to work in coordination with or proximity to others without being distracted by them; the ability to interact appropriately with the general public; and the ability to respond appropriately to changes in the work setting." (Tr. 22.) Finding that these limitations did not rise to the level of "complete inability to work," he concluded at step four that she could perform past relevant work as a telephone solicitor and home care giver. (Tr. 23.) Proceeding to step five, and based in part on vocational expert testimony, he made the alternative finding that there were other jobs in the national economy that Plaintiff could perform; therefore, she was "not disabled," as defined by the Social Security Act. (Tr. 24.)

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STANDARD OF REVIEW

In *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001), the court set out the standard of review:

A district court's order upholding the Commissioner's denial of benefits is reviewed *de novo*. *Harman v. Apfel*, 211 F.3d 1172, 1174 (9th Cir. 2000). The decision of the Commissioner may be reversed only if it is not supported by substantial evidence or if it is based on legal error. *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is defined as being more than a mere scintilla, but less than a preponderance. *Id.* at 1098. Put another way, substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Richardson v. Perales*, 402 U.S. 389, 401 (1971). If the evidence is susceptible to more than one rational interpretation, the court may not substitute its judgment for that of the Commissioner. *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner of Social Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999).

The ALJ is responsible for determining credibility, resolving conflicts in medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed *de novo*, although deference is owed to a reasonable construction of the applicable statutes. *McNatt v. Apfel*, 201 F.3d 1084, 1087 (9th Cir. 2000).

SEQUENTIAL PROCESS

Also in *Edlund*, 253 F.3d at 1156-1157, the court set out the requirements necessary to establish disability:

Under the Social Security Act, individuals who are "under a disability" are eligible to receive benefits. 42 U.S.C. § 423(a)(1)(D). A "disability" is defined as "any medically determinable physical or mental impairment" which prevents one from engaging "in any substantial gainful activity" and is expected to result in death or last "for a continuous period of not less than 12 months." 42 U.S.C. § 423(d)(1)(A). Such an impairment must result from "anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques." 42 U.S.C. § 423(d)(3). The Act also provides that a claimant will be eligible for benefits only if his impairments "are of such severity that he is not only unable to do his previous work but cannot, considering his age, education and work experience, engage in any other

kind of substantial gainful work which exists in the national economy. . . ." 42 U.S.C. § 423(d)(2)(A). Thus, the definition of disability consists of both medical and vocational components.

In evaluating whether a claimant suffers from a disability, an ALJ must apply a five-step sequential inquiry addressing both components of the definition, until a question is answered affirmatively or negatively in such a way that an ultimate determination can be made. 20 C.F.R. §§ 404.1520(a)-(f), 416.920(a)-(f). "The claimant bears the burden of proving that [s]he is disabled." *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999). This requires the presentation of "complete and detailed objective medical reports of h[is] condition from licensed medical professionals." *Id.* (citing 20 C.F.R. §§ 404.1512(a)-(b), 404.1513(d)).

It is the role of the trier of fact, not this court, to resolve conflicts in evidence. *Richardson*, 402 U.S. at 400. If evidence supports more than one rational interpretation, the court may not substitute its judgment for that of the Commissioner. *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579 (9th Cir. 1984). Nevertheless, a decision supported by substantial evidence will still be set aside if the proper legal standards were not applied in weighing the evidence and making the decision. *Brawner v. Secretary of Health and Human Services*, 839 F.2d 432, 433 (9th Cir. 1988). If there is substantial evidence to support the administrative findings, or if there is conflicting evidence that will support a finding of either disability or non-disability, the finding of the Commissioner is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir. 1987).

ISSUES

The question is whether the ALJ's decision is supported by substantial evidence and free of legal error. Specifically, Plaintiff argues the evidence does not support the ALJ's RFC

1 findings, or the finding of past relevant work. She also contends
2 the credibility assessment is erroneous and the hypothetical
3 question posed to the vocational expert was incomplete. (Ct. Rec.
4 17 at 7-8.)

5 DISCUSSION

6 A. Credibility

7 In his sequential evaluation, the ALJ found Plaintiff was "less
8 than fully credible" and discounted her subjective statements
9 concerning functional limitations. (Tr. 22.) When an ALJ finds
10 the claimant's statements as to the severity of impairments and
11 limitations is unreliable, the ALJ must make a credibility
12 determination with findings sufficiently specific to permit the
13 court to conclude the ALJ did not arbitrarily discredit claimant's
14 allegations. *Thomas v. Barnhart*, 278 F.3d 947, 958-959 (9th Cir.
15 2002); *Bunnell v. Sullivan*, 947 F.2d 341, 345-46 (9th Cir. 1991) (en
16 banc). The ALJ may consider the following factors when weighing the
17 claimant's credibility: the claimant's reputation for truthfulness,
18 inconsistencies either in her allegations of limitations or between
19 his statements and conduct, her daily activities and work record,
20 and testimony from physicians and third parties concerning the
21 nature, severity, and effect of the alleged symptoms. *Light v.*
22 *Social Sec. Admin.*, 119 F.3d 789, 792 (9th Cir. 1997). If the ALJ's
23 credibility finding is supported by substantial evidence in the
24 record, the court may not engage in second-guessing. See *Morgan*, 169
25 F.3d at 600. If there is no affirmative evidence that the claimant
26 is malingering, the ALJ must provide "clear and convincing" reasons
27 for rejecting the claimant's allegations regarding the severity of
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1 symptoms. *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998).
2 However, a claimant's subjective complaints may be discounted "if
3 inconsistencies in the record as a whole bring those complaints into
4 question." *Gonzales v. Barnhart*, 465 F.3d 890, 895 (8th Cir. 2006).
5 Evidence of a claimant's malingering, feigning or exaggerating
6 symptoms is a valid basis for rejecting a claimant's testimony. See
7 *Batson v. Commissioner of Social Security Administration*, 359 F.3d
8 1190, 1196 (9th Cir. 2004).

9 In assessing Plaintiff's credibility, the ALJ explained, "[t]he
10 record is replete with examples of [Plaintiff's] exaggeration,
11 distortion, and lying in order to get public assistance benefits
12 based on a mental impairment, and then later, in an attempt to
13 receive custody of her son, statements were made that she did not
14 have a mental impairment and could not remember receiving such a
15 diagnoses." (Tr. 22.) This reasoning is supported by substantial
16 evidence in the record and, alone, is sufficient to support
17 rejection of Plaintiff's claim of functional limitations. See
18 *Batson, supra*. In addition, the ALJ referenced Dr. Forsyth's and
19 Dr. Grubb's evaluations, which reported inconsistent statements by
20 Plaintiff, as support for his credibility findings. (Tr. 22.)

21 The record shows that, as early as 1998, Dr. Forsyth noted
22 possible malingering, based on Plaintiff's overstating symptoms,
23 inconsistencies and lack of desire to pursue vocational
24 rehabilitation or follow through with mental health recommendations.
25 (Tr. 181-84.) In 2000, Dr. Forsyth noted Plaintiff's self-report
26 required "careful consideration." (Tr. 184.) In his narrative, Dr.
27 Forsyth reported Plaintiff contradicted herself regarding her
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1 symptoms, and provided no hospital reports or medical treatment
2 records to support allegations of assault and injury. (Tr. 184-86.)
3 Objective test results indicated over-reporting and suspected
4 malingering. (Tr. 187-88.) Intellectual and cognitive functioning
5 were well within the average range and normal limits. (Tr. 188.)

6 In 2001, Pamela Ridgeway, Ph.D., Dr. Forsyth's associate,
7 reported little change from prior evaluations and specifically noted
8 that Plaintiff refused mental health treatment or medication. (Tr.
9 204.) She stated Plaintiff dropped out of vocational training, was
10 not amenable to treatment and preferred to write poetry. (Tr. 204-
11 205.) A failure to follow through with recommended treatment, and
12 claimant's failure to assert a good reason for this failure, is a
13 legitimate basis to impugn credibility. See *Fair v. Bowen*, 885 F.2d
14 597, 603 (9th Cir. 1989); see also 20 C.F.R. §§ 404.1530, 416.930.

15 In October 2001, Plaintiff also was evaluated by a Seattle
16 psychiatrist, Carla Hellekson, M.D. (Tr. 206-09.) Plaintiff
17 reported childhood abuse, sexual abuse, and binge drinking. (Tr.
18 206-07.) However, in April 2002, Plaintiff denied drinking alcohol.
19 (Tr. 217.) In June 2003, David Grubb, M.D., evaluated Plaintiff and
20 found no evidence of decompensation, no limits in her range of
21 interests and concluded that she was comfortable in her current
22 lifestyle. (Tr. 238.) He did not consider her a candidate for
23 psychiatric treatment. (Id.) On medical review in August 2003,
24 James Bailey, Ph.D., noted contradictions in her history and found
25 Plaintiff not fully credible. (Tr. 256.) He reported there were no
26 medical records to corroborate her reports of impairments and no
27 medications prescribed for her alleged symptoms. In 2003, Dr.
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1 Forsyth observed there were no medical reports to corroborate
2 Plaintiff's reported brain trauma, headaches, hearing loss,
3 confusion, memory problems, or knee and hip ailments. (Tr. 258.)
4 Objective test results indicated Plaintiff's over-endorsement of
5 distress reflected "faking bad." (Tr. 263.) Plaintiff indicated
6 she was not interested in vocational training because it would
7 jeopardize SSI eligibility. (Tr. 259, 263.)

8 In March 2004, Dr. Forsyth conducted an exhaustive
9 psychological evaluation Plaintiff, and provided the overview of
10 Plaintiff's condition relied upon by the ALJ in his credibility
11 assessment. (Tr. 22, 264-279.) Dr. Forsyth found Plaintiff an
12 unreliable informant, who denied many of the earlier self-reports
13 from prior evaluations. Significantly, she admitted that she had
14 told her counselors and the state what was needed to receive state
15 benefits, and admitted that her reports were exaggerations but
16 "didn't know it would come back to bite [her]." (Tr. 268.) She
17 denied former reports of domestic violence with her significant
18 other, prior reported rapes, reported self-cuttings, physical
19 ailments, and drug abuse. When questioned about her prior admission
20 of methamphetamine use daily for 18 months, she did not deny the
21 use, but stated she had "forgotten" her methamphetamine history.
22 (Tr. 270-73.) Dr. Forsyth also administered objective testing, the
23 results of which were invalid or indicated exaggeration of physical
24 and mental conditions. (Tr. 275.) Dr. Forsyth concluded Plaintiff
25 "says whatever she needs to." (Tr. 277.)

26 The ALJ's reasons for discounting Plaintiff's allegations are
27 "clear and convincing" and supported by reports from examining
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1 medical professionals and Plaintiff's own admissions. The ALJ did
2 not err in finding Plaintiff not fully credible.

3 **B. Step Four Findings**

4 At step four, the Commissioner makes RFC findings, and
5 determines if a claimant can perform past relevant work. Although
6 the burden of proof lies with the claimant at step four, the ALJ
7 still has a duty to make the requisite factual findings to support
8 his conclusion. *Social Security Ruling (SSR) 82-62*. This is done
9 by looking at the "residual functional capacity and the physical and
10 mental demands" of the claimant's past relevant work. 20 C.F.R. §§
11 404.1520(a)(4)(iv), 416.920 (a)(4)(iv). Past relevant work is work
12 performed in the last 15 years, lasted long enough to learn it and
13 was substantial gainful employment. *SSR 82-61*. In finding that an
14 individual has the capacity to perform a past relevant job, the
15 decision must contain among the findings the following specific
16 findings of fact: a finding of fact as to the individual's RFC; a
17 finding of fact as to the physical and mental demands of the past
18 job/occupation; and a finding of fact that the individual's RFC
19 would permit a return to his or her past job or occupation. *SSR 82-*
20 *62*.

21 Step four requires specific findings on all three points
22 sufficient "to insure that the claimant really can perform his past
23 relevant work." *Pinto v. Massanari*, 249 F.3d 840, 845 (9th Cir.
24 2001); see also SSR 00-4p. Evidence of the physical and mental
25 requirements of a particular job may be found in the Dictionary of
26 Occupational Titles (*DICOT*), other administratively recognized
27 publications, or vocational expert testimony. *SSR 82-61*.

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1 Vocational experts are used most often at an ALJ hearing. SSR 00-
2 4p.

3 Here, the ALJ made the following RFC findings:

4 The claimant has the residual functional capacity for
5 medium exertion. She is morbidly obese. Absent substance
6 addiction issues,¹ she has moderate limitations in the
7 ability to sustain an ordinary routine without special
8 supervision; the ability to work in coordination with or
proximity to others without being distracted by them; the
ability to interact appropriately with the general public;
and the ability to respond appropriately to changes in the
work setting.

9 (Tr. 24.)

10 Plaintiff argues the limitations included in the ALJ's RFC
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12 ¹ Where substance abuse/addiction is a consideration during the
13 sequential evaluation, the Regulations implemented by the
14 Commissioner require the ALJ to follow a specific two-step analysis.
15 20 C.F.R. §§ 404.1535(a), 416.935(a). First, the ALJ must conduct
16 the five-step inquiry without attempting to determine the impact of
17 substance abuse/addiction. If the ALJ finds that the claimant is
18 not disabled under the five-step inquiry, the claimant is not
19 entitled to benefits and there is no need to proceed with further
20 analysis. *Id.* If the ALJ finds that claimant is disabled, and
21 there is evidence of substance abuse, the ALJ should proceed under
22 the sequential evaluation and §§ 404.1535 or 416.935 to determine if
23 the claimant would still be disabled *absent the substance abuse*.
24 *Bustamante v. Massanari*, 262 F.3d 949, 955 (9th Cir. 2001). Here,
25 the ALJ did not find make a finding that Plaintiff was disabled or
26 that substance abuse was a contributing fact material to a finding
27 of disability; therefore, any reference to limitations "absent
28 substance addiction issues" is unnecessary.

1 assessment did not include all limitations supported by the record.
2 Specifically, she asserts she is "clearly not capable" of working at
3 a medium level because of her obesity and physical condition, but
4 cites no evidence in support. (Ct. Rec. 17 at 9).² An independent
5 review of the record reveals no medical evidence of a physical
6 impairment that would cause significant exertional limitations. In
7 support of Plaintiff's contention that her mental impairments
8 prevent her from performing work, she references the opinions of
9 examining psychologists. (Id. at 10). However, the ALJ properly
10 discounted Plaintiff's self-reported limitations and discussed
11 objective testing results that were consistently interpreted as
12 invalid or indicating over-reporting. (Tr. 17, 19, 188-89, 273-75).
13 The courts also have recognized conflicting medical evidence, the
14 absence of regular medical treatment during the alleged period of
15 disability, and the lack of medical support for doctors' reports
16 based substantially on a claimant's subjective complaints, as
17 specific, legitimate reasons for disregarding an examining
18 physician's opinion. See *Flaten v. Secretary of Health & Human*
19 *Services*, 44 F.3d 1453, 1463-64 (9th Cir. 1995). The record
20 documents that Plaintiff's self-reports were inconsistent and
21 exaggerated, there was no medical evidence to corroborate her
22 reports of physical ailments or prior assaults, and she did not
23 follow through with treatment recommendations until necessary to
24 regain custody of her son. (Tr. 184, 206-09, 258.)

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26 ² Medium work is defined as work involving lifting no more than
27 50 pounds at a time with frequent lifting or carrying of objects
28 weighing up to 25 pounds. 20 C.F.R. § 404.1567(c).

1 It is well settled that the RFC determination is the sole
2 province of the Commissioner, and the ALJ is "responsible for
3 determining credibility, resolving conflicts in medical testimony
4 and for resolving ambiguities." *Richardson*, 402 U.S. at 400;
5 *Andrews*, 53 F.3d at 1039; *SSR* 96-8p (RFC assessment is an
6 administrative finding of fact reserved to the Commissioner); *SSR*
7 96-5p. The ALJ did not err when he adopted certain limitations
8 opined by medical expert Dr. Delbert, who had reviewed the record in
9 its entirety. (Tr. 23.) Testimony of a medical expert may serve as
10 substantial evidence when supported by other evidence in the record.
11 *Andrews*, 53 F.3d at 1041. There is no requirement to include all
12 the opinions of a medical expert, only those that are supported by
13 the record in its entirety. Dr. Delbert's opinions that were relied
14 upon by the ALJ are supported by the record, specifically Dr.
15 Forsyth's evaluations, and the ALJ's credibility findings. *Webb v.*
16 *Barnhart*, 433 F.3d 683, 688 (9th Cir. 2005)(credibility a legitimate
17 factor to consider in evaluating medical evidence); *SSR* 96-8p (in
18 assessing RFC, material inconsistencies are considered and resolved
19 by ALJ); *SSR* 96-7p (consistency of an individual's statements in the
20 record considered a strong indication of credibility).

21 Referencing vocational expert testimony, the ALJ concluded
22 Plaintiff, with the moderate limitations described, could return to
23 her past work as a home care aide and telephone solicitor. (Tr.
24 23.) This finding is supported by vocational expert testimony that
25 neither job requires working with a large number of people, more
26 than occasional lifting of non ambulatory patients, or more than
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1 limited decision-making of two or three steps.³ (Tr. 397, 399.)

2 Plaintiff challenges the ALJ's finding that her past work
3 experience was "past relevant work," as defined by regulation,
4 because the vocational expert testified her earnings were limited.
5 (Tr. 393; Ct. Rec. 17 at 11.) Past relevant work is work performed
6 in the last 15 years, lasted long enough to learn it and was
7 substantial gainful employment. SSR 82-61. The vocational expert
8 found the time frame worked was sufficient to learn those jobs and
9 Plaintiff testified she performed the duties of a home care aide
10 when in-home nurses were not there. (Tr. 393.) However, Plaintiff
11 argues her earnings did not amount to substantial gainful
12 employment. As Defendant argues, this is because Plaintiff quit the
13 job for reasons unrelated to any impairment claimed. (Ct. Rec. 19,
14 at 9; Tr. 884.) Under the regulations, the Commissioner will
15 consider all evidence of work, because even if the work done was not
16 substantial gainful activity, "it may show that you are able to do

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18 ³ The vocational expert testified: "clearly the telephone
19 solicitor is well within the range of the -- as is the home health
20 aide which was previously done. Typically, home health aides do
21 have to assist patients, but generally, they're not moving
22 nonambulatory. Nonambulatory patients typically have to be
23 institutionalized." (Tr. 397.) (Emphasis added.) The above
24 emphasized language appears to be a transcription error or typo
25 since in context, it appears the vocational expert opined that
26 generally nonambulatory patients are in an institutional setting,
27 whereas patients in a home setting needing assistance typically are
28 ambulatory.

1 more work than you actually did." 20 C.F.R. §§ 404.1571, 416.971.
 2 Further, the vocational expert testified that the job of telephone
 3 solicitor was within Plaintiff's capabilities, as was home health
 4 aide as previously performed by Plaintiff. (Tr. 397.) If it is
 5 assumed the ALJ erred in his step four determination, any error is
 6 harmless, because the ALJ proceeded to step five, and found other
 7 jobs Plaintiff could perform. The step four error does not negate
 8 the validity of the ALJ's ultimate conclusion that Plaintiff could
 9 perform work and was, therefore, not disabled. *Batson*, 359 F.3d at
 10 1196.

11 **C. Step Five Findings**

12 At step five, the burden shifts to the Commissioner to show
 13 that there are other jobs in the national economy that Plaintiff can
 14 perform. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9th Cir. 1984). At
 15 the hearing, the ALJ posed the following hypothetical to the
 16 vocational expert:

17 [A] young lady, 20-27, completed high school in an
 18 appropriate school district and has some moderate
 19 depression, has a difficulty in learning the principles of
 20 mathematics and has some anxiety related disorders that
 21 would limit her in terms of being employed in -- with
 22 large groups of people. And with some personality
 23 disorder, but there are no problem symptoms in behavior or
 24 mental processes. Would have moderate difficulty in
 25 maintaining social functions. Otherwise there's no
 26 significant limitations. At times, and this is a
 27 redundancy of the social functions really, that there
 28 would be - - would have difficulty in maintaining routine
 or ordinary routine work without special supervision.
 Would be limited in making simple work-related decisions.
 Would have some problem in getting along with co-workers
 that would be identified as moderate. Maintaining
 socially appropriate behavior. . . . Respond
 appropriately to change in the workplace, she would have
 some difficulty again as a moderate problem. And I also
 think that we should include in this definition a capacity
 to do physical exertion or at least to medium, but is
 limited in some aspects because of large weight, her being

1 heavy. I don't like the word obese, but I'm afraid it
2 applies here.

3 (Tr. 393-94.)

4 The vocational expert testified there are unskilled entry level
5 jobs that Plaintiff could perform: ticket salesperson, theater
6 usher, screen monitor, and teacher's aide. (Tr. 23, 399.)

7 Plaintiff argues the hypothetical given by the ALJ was
8 incomplete and, therefore, the vocational expert's testimony was not
9 substantial evidence on which to base the step five finding. (Ct.
10 Rec. 17 at 12.) However, an ALJ is not obliged to accept as true
11 restrictions propounded by Plaintiff's counsel. *Magallanes v.*
12 *Bowen*, 881 F.2d 747, 756 (9th Cir. 1989). The hypothetical posed to
13 the vocational expert included the limitations in the RFC, which as
14 discussed above, is supported by substantial evidence. Further,
15 contrary to Plaintiff's argument, the ALJ's hypothetical reflects
16 the opinions Dr. Delbert, as well as those from other examining
17 psychologists. In light of Plaintiff's impugned credibility and the
18 record in its entirety, substantial evidence exists that she was
19 capable of working. The ALJ's step five determination that
20 Plaintiff could perform other work in the national economy is
21 affirmed.

22 **CONCLUSION**

23 The ALJ's determination that Plaintiff is not disabled as
24 defined in the Social Security Act is supported by substantial
25 evidence in the record in its entirety and is free of legal error.
26 Accordingly,

IT IS ORDERED:

1. Plaintiff's Motion for Summary Judgment (**Ct. Rec. 16**) is
DENIED;

2. Defendant's Motion for Summary Judgment (Ct. Rec. 18) is
GRANTED;

The District Court Executive is directed to file this Order and provide a copy to counsel for Plaintiff and Defendant. Judgment shall be entered for Defendant and the file shall be **CLOSED**.

DATED August 23, 2007.

S/ CYNTHIA IMBROGNO
UNITED STATES MAGISTRATE JUDGE